

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

EL19-003

IN THE MATTER OF THE
APPLICATION BY CROWNED
RIDGE WIND, LLC FOR A
PERMIT OF A WIND ENERGY
FACILITY IN GRANT AND
CODINGTON COUNTIES

AFFIDAVIT

State of South Dakota

County of Deuel

Patrick Lynch being first duly sworn upon oath, states and alleges as follows:

1. The undersigned affiant is an Intervenor in this matter and provides this affidavit to the Public Utilities Commission on information and belief and in support of the Intervenor's Second Motion to Deny and Dismiss the above entitled proceedings. Capitalized terms used to describe matters in this affidavit are the terms as defined in the beginning of Intervenor's Brief in Support of Intervenor's Motion to Deny and Dismiss.
2. On January 30, 2019, Applicant applied to the PUC for a permit to pursue its Crowned Ridge Wind project. *Crowned Ridge Wind Farm's Application* (Jan. 30, 2019) [hereafter

“*CRWind Application*”). In Exhibits attached to the Application, the Thompsons are listed as participants on 22 different maps. *CRWind Application Appendix A* (figures 1 – 14) through Appendix M. The Thompsons were not, in fact, participants. *Affidavit of John Thompson and Email Correspondence* (filed EL 19-003 docket May 20, 2019) [hereinafter “*Thompson Affidavit*”].

3. In its Application, CRW claimed: “Landowner support of the project has been present for over 10 years and is showcased by the Applicant’s ability to obtain the necessary wind leases to adequately host the project.” *CRWind Application*. Sam Massey and Tyler Wilhelm, who are together “responsible for the development, permitting, community outreach, regulatory compliance, and meeting the commercial operations date for the 300 megawatt Crowned Ridge Wind generation project (“Project”),” claimed in their testimony that CRW “coordinated with landowners” regarding turbines, access roads, and collector line locations. *Direct Testimony and Exhibits of Tyler Wilhelm and Sam Massey* 1 ll.12 – 14 (Jan. 29, 2019); *Id.* at 6 ll. 4 – 8 (Jan. 29, 2019) (“Development activities for the Project commenced in 2008. Over the past 10 years the CRW has been actively engaging stakeholders by working closely with landowners, tribal and local governments, and federal and state agencies to design the Project. Stakeholders have been approached directly to address concerns with the proposed siting and placement of the Project’s infrastructure.”). CRW had not, in fact, coordinated with the Thompsons. *Thompson Affidavit*.
4. On February 7, 2019, Applicant filed an official landowner map with the Commission. Figure 3a (Feb. 7, 2019). On February 19, 2019, Applicant submitted to the PUC “updated maps and results tables that reflect the changes in participation status for the

noise receptors” (Update re shadow flicker receptors filed 4.9.19) as well as “updated maps and results tables that reflect the changes in participation status for the shadow flicker receptors” (Update re noise receptor participation filed 4.9.19). Each of the “updated maps” continue to show the Thompson properties as part of the Project.

5. NextEra, through its representative and on behalf of Crowned Ridge Wind, submitted a letter on Feb. 18, 2019, and it renewed on Mar. 15, 2019 an application to Grant County; both are related to this Project. In both, NextEra represented to Grant County that the Thompson property was a participator in the Project. Grant County NextEra Cattle Ridge CUP Application (Feb. 18, 2019).
6. On March 5, 2019, James Thompson wrote to Russ Loyd at NextEra to alert Applicant that:

the map erroneously indicates that our family farm, labeled John L. Thompson, is under a lease agreement for wind dev. This is not accurate. Secondly, the map currently shows a dashed line indicating plans for a collection line dissecting our property (via the creek). This is also not true. No agreement/lease/pass through access has been authorized by us, our family.

Thompson Affidavit at 5. Mr. Thompson copied Tyler Wilhelm on the email. *Id.* at 4. Mr. Wilhelm did not reply, so Mr. Thompson wrote back on March 19, 2019, to reiterate: “no owner of this farm property has ever signed a lease with NextEra or

previous company(ies) for any purpose related to wind or energy production (or similar).” *Id.* at 4. He went on to “ask again that [NextEra] please immediately clarify the reason(s) why your company has marketed and submitted for planning purposes a map that inaccurately ‘claims’ that our family property titled ‘John L. Thompson’ on your map is under any related lease agreement.” *Id.*

7. That day, March 19, 2019, in the email attached to the May 10, 2019 Thompson Affidavit, Mr. Wilhelm stated that the Thompsons were not participators, that NextEra had no rights to their property, and the Project maps needed to be revised. *Id.* (“After further due diligence, our team was able to confirm that there was a mapping error and that the Thompson properties are not contracted (just as you have stated. . . the Project Site plan is not accurate . . . and would need to be revised to relocate the proposed development from the property . . . Site Plan revisions are in process now”) (emphasis in original).
8. The next day, on March 20th, 2019, at the PUC public input hearing, Commissioner Nelson asked Mr. Wilhelm if the official landowner map had been updated; Mr. Wilhelm said no. *In Re: The Application by Crowned Ridge Wind for a Permit of a Wind Energy Facility in Grant and Codrington County: Public Input Hearing Recording 2:01:00* (Mar. 20, 2019). The Commissioner answered: “If there are updates to that before we get to the evidentiary hearing, we’d like to have a further update so that at that hearing we’ve got an up-to-date map.”

9. Two days later, on March 22, 2019, Applicant responded to Intervenor's first data request. It provided no updated maps.

10. Mr. Massey and Mr. Wilhelm submitted, and docketed on April 9, 2019, supplemental testimony to address issues from the PUC public input hearing. There is no report of an updated map in the testimony; they continue to rely on maps that show the Thompson property as part of the Project Site and name the Thompsons as Project participants. *Supplemental Material That Updates Sound Study to Reflect Landowner Participation Status* (Feb. 19, 2017; filed Apr. 9, 2019) The Thompsons are not participants. *Thompson Affidavit* at 2.

11. On May 9, 2019, the Thompsons signed an affidavit filed as testimony with the docket in this matter on May 10, 2019, stating they "are NOT participators in any form of the Crowned Ridge Project." *Thompson Affidavit* at 2 (emphasis in original).

12. The alleged Thompson easement, if it had been granted by the Thompsons, would have connected a large portion of the northeastern part of the proposed Project. That portion consists of 25 proposed designated or optional turbine locations. Intervenor's ability to understand the scope and coverage of the Project is affected by the existence or absence of turbines that would have been connected by a Thompson connection line easement. The fact that the Applicant's representations are not true (and that the Application may be changed by Applicant with some last-minute "modification" or amendment) concerning

relevant information which has consistently been represented as a part of the Application prejudices the Intervenors.

13. Intervenors' attorney inquired of Commission Staff regarding information they had on facility questions. The following is the email inquiry and response:

From: David Ganje <davidganje@ganjelaw.com>

Sent: Monday, May 13, 2019 5:44 PM

To: Edwards, Kristen <Kristen.Edwards@state.sd.us>

Cc: 'mschumacher@lynnjackson.com'

(mschumacher@lynnjackson.com)

<mschumacher@lynnjackson.com>

Subject: [EXT] EL19-003

Ms. Edwards

In reviewing the Applicant's Response to Staff's Data Requests identified as 2-24) the following responsive statement was made by the Applicant as I am informed on March 18th, 2019, "While placement of turbines and some other project facilities is considered relatively final, other project feature locations may be refined slightly pending ongoing survey efforts and any discoveries made during construction of unexpected circumstances. As such, the final location

of certain Project facilities, such as collection lines, is still being finalized, ...”

The Applicant says it has been working on this project for about 10 years. Yet we are less than 30 days from the hearing on the merits, and as of this date I don't know what turbines and what project facilities are final or even “relatively final.” And I do not know from papers filed by the Applicant what collection lines are real and which are not real. This lack of information prejudices my clients' ability to have a full and honest, and timely, picture of the Application, and in that regard a full and fair hearing. So please help if you can by sharing any updated responses to the March 18th 2019 statement of Ms. Wells on behalf of the Applicant.

Reserving my clients' legal rights in this matter I thank you.

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From: Edwards, Kristen [mailto:Kristen.Edwards@state.sd.us]

Sent: Wednesday, May 15, 2019 7:12 AM

To: David Ganje <davidganje@ganjelaw.com>

Cc: 'mschumacher@lynnjackson.com'

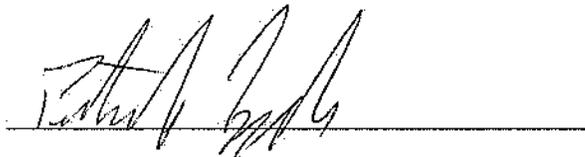
(mschumacher@lynnjackson.com)

<mschumacher@lynnjackson.com>

Subject: RE: EL19-003

I don't think I have any new information. I think we're still waiting on feedback on the Thompson property, but other than that, I don't know of any updates.

14. The Applicant knew at the time of filing the Application on Jan. 30, 2019; at the time of filing an updated official landowner map on Feb. 7, 2019; at the time of filing updated maps on Feb. 19, 2019; at the time of filing for a CUP permit with Grant County on Feb. 18, 2019; at the time of filing an amended application for a CUP permit with Grant County on Mar. 15, 2019; at the time Applicant made representations to the Commission on Mar. 20, 2019; at the time Applicant submitted responses to Intervenor's Data Requests on Mar. 22, 2019; at the time Applicant submitted supplemental testimony to the PUC on Apr. 9, 2019; and thereafter—during all these times Applicant knew, but failed to disclose, that an important, relevant, and material easement agreement with the Thompsons did not exist.



)SS

COUNTY OF Deuel)

BE IT KNOWN, that on the 16th day of May 2019, before me, the undersigned officer, personally appeared Patrick Lynch who is to me known to be the person described in and who executed the above and acknowledged the same to be his voluntary act and deed. IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official hand and seal, the day, month, and year last above written.



Notary Public

My Commission Expires: June 14, 2019